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SUBJECT: EXTRADITION: INDIA: KULBIR SINGH BARAPIND: POST
RESPONSE

REF: A. STATE 222735

[B](#). 12/01/05 POMPER EMAIL TO POST ATTACHING CAT
SUBMISSION

[C](#). NEW DELHI 6311

[D](#). 00 NEW DELHI 2852

[E](#). 98 NEW DELHI 5439

[F](#). 96 NEW DELHI 14669

[1](#). (SBU) Summary: This message will address as many of the Ref A questions as Post is able to answer. Confirming or refuting specific allegations of torture is extremely difficult by the very nature of the usual secrecy surrounding torture. Barapind's claims of torture include a litany of many of the forms of torture the police in India are known to use on criminal and terrorist suspects. At the time of Barapind's arrest, police routinely tortured and/or killed terrorists' families and associates. Today, however, India has numerous activist human rights NGOs that specialize in assisting victims of police abuse, including some that focus on Punjab. The free press is also sensitive to human rights, and a leading HR activist opined "no one will touch" Barapind given his prominence. The GOI will probably be willing to give the USG assurances of Barapind's treatment, as they did when Portugal in November extradited to India notorious terrorist suspect Abu Salem. That said, India's judiciary is independent; in the Salem case, the presiding judge stated that he might not be bound by assurances the GOI made to Portugal that he would not face the death penalty. Presumably, however, the government could and would appeal any such judicial finding that was in contravention of diplomatic assurances. End Summary.

[2](#). (SBU) The Punjab of today is dramatically different from the Punjab Barapind fled. Then, a blazing, foreign-supported insurgency raging across the Punjab threatened the security of the government in Delhi and deepened divisions between India and Pakistan. Sikh terrorists even assassinated the serving PM of India, Indira Gandhi. Today, the Punjab remains one of the richest states in India, with a progressive, pro-agriculture government whose Chief Minister (a Sikh) is working to promote harmonious relations among Sikhs and between India and Pakistani Punjab. India also remains a robust democracy, and the Indian government and people are proud of their traditions of rule of law and protection of human rights. India's free press, including in Punjab, actively pursues and exposes government excesses of all varieties, including torture and corruption. The end of the Punjab insurgency in the 1990s ushered in a dramatic decline in custodial deaths and torture allegations. Nor do Sikhs face specific hardships; they are notably prosperous as a people and fully integrated in Indian civil society. For example, the current Indian Prime Minister and Army Chief are Sikhs. Sikhs also enjoy personal income above the rest of India, assets out of proportion to their demographic numbers, and presence in the Armed Forces, police, and bureaucracy well out of proportion to their numbers vis a vis the rest of the population of India. Finally, Sikhs overwhelmingly oppose the efforts of Khalistani (pro-insurgency) Sikhs, and the intensive police and security force anti-insurgency efforts of the 1980s and 1990s are largely a thing of the past.

[3](#). (SBU) In addition to Post's own research and knowledge of the legal/law enforcement environment in the state of Punjab, PolFSN interviewed three Indian citizens we believe to be credible sources who are intimately familiar with the subject -- they all opposed Sikh terrorism and the Khalistan movement, but are also outspoken against police abuses:

-- Avinash Chopra is the editor of Punjabi Kesari. Sikh terrorists killed several of his relatives during the 1980s-90s.

-- Herkewaljit Singh is the editor of Daily Ajit, also a Punjabi newspaper. He and Chopra reported on the Punjab insurgency, and have been Embassy contacts for more than 15 years.

-- Rajan Lankanpal is a Punjab High Court Advocate and human rights activist. He is also the legal counsel for Kamaljit Kaur Sandhu and Daya Singh Sandhu, who were cited in the Barapind application. He has filed an estimated 3,000 cases

alleging extra-judicial killing against police in Punjab since the 1980s.

Responses to Reftel Questions

14. (SBU) Responses to Reftel questions are labeled to match the labeling of the original questions.

Begin Questions and Responses:

(a) Question: Barapind's submission claims that he was detained and tortured by Indian officials in June 1988 and July 1989 (see Ref B pages 11-14 and 15-16). It claims that he was tortured in 1988 first by the Nakodar and then by the Goraya police. It also claims that he was tortured in 1989 at a Central Reserve Police Force Camp in Phagwara and again after being transferred to the custody of the Criminal Investigation Agency in Kapurthala. Department requests any information that Post can gather that would help to assess the veracity of these claims. (NOTE: Each town/city listed in this paragraph is located in the state of Punjab. End Note.)

(a) Response: We have been as yet unable to confirm or refute Barapind's specific torture claims, although the abuses alleged are consistent with other claims made by torture victims in India.

(b) Question: Barapind's submission claims that his family, friends, and associates were subject to torture, execution, coercion, and other mistreatment, including as follows:

(1) security forces severely tortured Barapind's father, brother (Balwand Singh) and brother-in-law (Balraj Singh), and illegally detained the rest of his family (Ref B pages 15-16 and 41-43 of 11/23 submission);

(2) security forces illegally detained and tortured Barapind's SSF associate, Gurtej Singh, because of his association with Barapind (Ref B page 15); and

(3) the government caused the extrajudicial execution of his alleged accomplices -- including Ranjit Singh Rana in 1991, Haminder Singh in early 1992, Gurdip Singh Deepa in December 1992, Majinder Singh in December 1992, and Manjit Singh Billa in 1992 (Ref B page 45).

Department requests any information that Post can gather that would help to assess the veracity of these claims.

(b) (1-3) Response: We have been as yet unable to authoritatively confirm or refute Barapind's specific claims that his family, friends, and associates were subject to torture, execution, coercion, and other mistreatment. Editor Avinash Chopra stated that Barapind's relatives were tortured in 1988-89 as a matter of procedure, and that the police routinely tortured and/or killed terrorists' families and associates. He was unable to provide specific details, but he recalled having covered the issue of torture of the family and associates of terror suspects as a journalist in the 1980s-90s.

(c) Question: Barapind's submission claims that any diplomatic assurances that the USG obtains from India cannot protect Mr. Barapind from torture. In making this argument, it states that on at least two prior occasions, India failed to honor diplomatic assurances that it would not torture Sikhs extradited to India by the United States. In particular, the submission cites the cases of Daya Singh Sandhu and Kamaljit Kaur Sandhu, both of whom were extradited to India in 1997 after the USG had procured assurances from the GOI that they would be afforded protections under the Indian Constitution and laws prohibiting torture and protecting persons against torture and degrading and inhuman treatment; the right to counsel; and the right to have counsel, family and representatives of the Indian Human Rights Commission visit them while in custody. (In addition, the GOI provided a nonpaper suggesting that the Sandhus would be held almost immediately upon return in judicial remand, a situation in which custodial abuse was understood to be particularly rare.)

Barapind's submission claims that, in spite of the GOI assurances, the Sandhus were tortured "immediately upon their return," that they were denied access to counsel and fair trials, and that they were tried on charges that they were not extradited on in violation of the "rule of specialty" under treaty law and practice. In order to assess Barapind's claims, Department requests Post's input on the following items:

(c) (1) Question: The credibility/truthfulness of the Sandhus' claims with respect to their physical treatment upon being returned to India (Ref B pages 21-24);

(c) (1) Response: We have been as yet unable to confirm or refute the Sandhus' specific claims with respect to their physical treatment upon being returned to India. Avinash Chopra and Rajan Lankanpal each claimed that the Sandhus were tortured upon their return to India, but they were unable to provide specific details.

(c) (2) Question: The accuracy of the claim that the Sandhus were denied access to counsel or were provided limited/perfunctory access to counsel (Ref B pages 51-53); and

(c) (2) Response: Avinash Chopra told us he was certain that the Sandhus did/did have access to counsel upon their return to India in 1997. Rajan Lankanpal said he was not aware that the Sandhus were denied legal counsel at that time.

(c) (3) Question: The accuracy of the more general claim that Sandhus did not receive a fair trial because of violations of the rule of specialty and prolonged pretrial detentions in addition of lack of access to counsel (Ref B pages 50-58).

(c) (3) Response: Rajan Lankanpal told us that the Punjab court did at the time of the Sandhus' trial add additional charges beyond those listed in the extradition order, and that those charges remained after the Indian Supreme Court ordered the charges be dropped (after the Sandhus' petition). He added that the Sandhus have to date only been tried and convicted for charges on the extradition order.

(c) (4) Question: Department would also be grateful if Post could share any information about reporting/monitoring that may have come to its attention with respect to the Sandhus post-extradition situation (in addition to what is contained in Ref E) that might shed light on Barapind's claims.

(c) (4) Response: As to the Sandhus' post-extradition situation, Rajan Lankanpal told us Kamaljit Kaur Sandhu was released from prison in 2004. Her husband Daya Singh Sandhu is still in prison, serving his sentence for the charges for which he was extradited. We do not know if the added charges remain pending in Punjab, or if they have been dismissed or removed.

(d) Question: Under federal regulations, the Department's review of Barapind's submission must take into account, among other relevant considerations, whether India shows a consistent pattern of gross, flagrant or mass violations of human rights (22 CFR 95.2(a)(2)). Barapind's submission claims that there continues to be a widespread practice of torture and custodial deaths in Punjab and India -- citing among other things a recent State Department report (Ref B pages 30-33). Department would appreciate Post's assistance in evaluating this claim -- including an assessment of whether incidences of custodial abuse are on the rise or fall in India, in Punjab, and with respect to Sikhs held in custody.

(d) Response: Post can confirm that the law enforcement situation in Punjab in 2005 has dramatically improved over the atmosphere that existed during the insurgency in 1980s-1990s, and can attest that the incidence of torture and custodial deaths in Punjab has decreased dramatically. As noted in the 2004 HRR, however, custodial abuse remains a problem in India, and many alleged police violators (including the officer Barapind accused of having directed his torture) have not been tried for their reported offenses.

We do not have information that specifies the treatment of Sikhs in police custody. As regards torture in Punjab, the 2004 Human Rights Report notes that:

-- One prisoner in Amritsar Central Jail alleged he was branded on his back by prison officials. Doctors found fresh scars on his back that had been produced by hot iron rods.

-- Another prisoner alleged that police had forced him to sign four blank confession statements after repeated torture by electric shock.

-- Indian media reported that 59 Punjab police officers were found guilty of human rights violations in 2004.

-- The Director General of Punjab Police reported that criminal proceedings had begun in the cases of two persons who died in police custody during the year.

-- The pattern of torture and extrajudicial killings prevalent in the 1990s has ended, but the government has failed to hold accountable hundreds of police and security officials for serious human rights abuses (committed from 1984-94).

(e) Question: In the same vein, Department would be grateful for Post's assessment of the statements that "(t)he Indian government believes that insurgency is being revived in

Punjab, and is torturing suspected Sikhs and their supporters" (Ref B pages 33-36).

(e) Response: The Indian government and Indian terrorism experts generally viewed the May 22 Delhi cinema bombings, which Indian government says were carried out by the banned Sikh terrorist group Babbar Khalsa International (BKI), as a "last gasp" of Sikh terrorism. Police arrested numerous suspects based in part on an analysis of telephone call patterns, and also recovered hundreds of kilos of weapons and explosives. The government, and our contacts in Punjab (Ref C), are agreed that there is no evidence that the Sikh insurgency is reviving. We are not aware of Punjab police targeting Sikhs for abuse because of their religion. Indeed, the Punjab police and state administration are dominated by Sikhs.

Per (Ref C), a Political Officer traveled to Chandigarh August 4-5 to interview government, business, police, civil society, and political leaders. They were uniformly unperturbed by reports of terrorist arrests, attributing the cinema bombings to outlying extremists. The Punjabis interviewed did not anticipate a return to the violence of the 1980s-90s, and they assessed that the Khalistan movement does not have sufficient manpower or appeal to destabilize Punjab as it once did. Herkewaljit Singh told us that that the Sikh population in Punjab is almost uniformly opposed to Khalistani terrorism, arguing that the Khalistani groups maintain their lifeblood mainly through contributions from Sikh expats.

Herkewaljit Singh and human rights activists in Chandigarh accused the Punjab Police of manufacturing evidence to frame suspected militants, and noted that the police have no accounting system to track weapons and explosives seized for evidence, allowing them to plant the same explosives several times.

Sikhs continue to retain their prominent status in India's government, military, and private sector. The Prime Minister and Army Chief, for instance, are both observant Sikhs.

(f) Question: There are several places where Barapind's submission suggests that systemic problems skew the likelihood that Barapind will be tortured upon return. In particular, the submission suggests that "(1) torture is imbedded and accepted in the culture and investigative methodology of India's law enforcement officials ... (2) security forces will have exclusive control over Mr. Barapind during police remand ... without any possibility of oversight ... (3) Mr. Barapind has no right to counsel during interrogations ... and (4) (assuming he is tortured, Barapind) will have no judicial remedy to redress or prevent further torture" (Ref B pages 24-26). The submission also suggests that India's laws do not adequately protect against torture, and, in fact, encourage torture during interrogations (Ref B pages 48-50). Department requests Post's views on the accuracy of these claims.

(f) (1) Response: The statement that "torture is imbedded and accepted in the culture and investigative methodology of India's law enforcement officials" is largely accurate. Forensics in India is weak -- for example, two DNA labs service the entire country, and even a few years ago police would routinely staple floppy disks seized as evidence to police reports. As a consequence, many cases like Barapind's revolve around personal testimony that is subject to coercion or force. As Delhi-based terrorism expert Ajai Sahni explained, especially in regions rife with terrorism (Jammu & Kashmir, the growing Naxalite belt, the Punjab of the 1980s-90s, etc.), frustration among police, prosecutors and local inhabitants over the difficulty of securing convictions against terrorists has led to a culture that tacitly condones torture. He also remarked that judges secretly condone extra-judicial killings, as they fear reprisals by terrorists if they try cases against them.

(f) (2) Response: Indian judges are politically very powerful, and the rule of law is supported by an assertive free press and politicians.

(f) (3) Response: We obviously cannot comment authoritatively as to whether Barapind would have the right to an attorney during his interrogation, although the right to counsel is enshrined in Indian law.

(f) (4) Response: Indian federal and state law prohibits torture. India today has many human rights NGOs that specialize in assisting victims of police abuse, including some that focus on Punjab. Assuming Barapind is permitted to have contact with NGO activists, they will ensure that abuses, if they occur, are aired in the Indian media. We cannot predict, however, Barapind's future ability to avail himself of the courts. Avinash Chopra told us that "no one will touch (Barapind)" because his case is high profile (in part because of the extradition) and because of the strength

of human rights activists in the state.

(g) Department requests Post's views on the extent to which any risk of post-extradition torture that might be identified could be addressed by a combination of assurances (the specific contents of which will need to be considered), access, and monitoring. Department is particularly interested in Post's assessment of the following:

(g) (1) Response: Question: Whether, as a general matter, the GOI is likely to be willing to provide assurances in this case and how long it is likely to take (Days? Weeks?) to procure these assurances.

(g) (1) The GOI is usually prickly on issues related to sovereignty. That said, the Home Ministry appears energized to take possession of Barapind, and may be amenable to assurances if they are kept out of the public arena. The MHA is quite happy with US assistance to extradite suspected terrorist Abu Salem from Portugal, for which the GOI made assurances that Salem would not face the death penalty.

(g) (2) Question: Which entity within the GOI (and at what level) could most credibly give assurances;

(g) (2) Response: The Home Ministry at the highest level should give the assurance, in conjunction with Punjab state officials and the police force. The National Human Rights Commission (NHRC), at the level of the Chairperson/Special Rapporteur on Torture (usually a senior member of the NHRC), could also give the assurance.

(g) (3) Question: To the extent that incomplete coordination between national and state or local officials may increase the risk of non-compliance with assurances, whether this might be addressed by including in the requested assurances a stipulation that they have been coordinated appropriately at the regional/local level, or by any other mechanism;

(g) (3) Response: To be effective, any assurances would have to include coordination with Punjab state judicial and law enforcement entities.

(g) (4) Question: Whether the GOI would be willing to assure the USG or another reliable interlocutor (for example, a designated NGO) access to Barapind once he is taken into GOI custody. In discussing which assurances might be given (and who might give them), Department requests that post include an assessment of the credibility/reliability of those assurances.

Please note that in considering these questions it may be helpful to look at the assurances that GOI provided both in the Sandhus' case of 1996/7 (Ref F) and in the Sandhu/Gill case of 2000 (Ref D). Department will provide materials relating to those assurances under separate cover.

(g) (4) Response: Post notes that GOI has issues such assurances in the past (Refs D and F) as well as in the Abu Salem case noted above. However, India's judiciary is fiercely independent -- in the Salem case, the presiding judge said he would not be bound by assurances the GOI made to Portugal. Presumably the government could appeal any such finding that was in contravention of diplomatic assurances.

(h) Question: Department also requests post's assistance in reviewing the assertions contained in Barapind's submission that (a) Barapind will not be able to relocate to avoid torture (even if released from custody because of dangers presented by Indian security forces -- see Ref B page 44) and (b) one of the policemen allegedly responsible for Barapind's torture in 1988 has been promoted to the senior ranks of the Punjab police force (Ref B page 47).

(h) (a) Response: We do not assess Barapind's claim that he will be unable to relocate out of Punjab to be credible. Economic and social pressures do limit the movement of many Indians, however, the population is legally and generally free to move within the country.

(h) (b) Response: With regard to former Senior Superintendent Punjab Police (Jalandhar) Mohammad Izhar Alam, we can confirm that he now holds the position of Additional Director General (Administration) Punjab Police, a senior police posting. During the insurgency, he assembled a large, personal paramilitary force of approximately 150 men known as the "Black Cats" or "Alam Sena" ("Alam's Army") that included cashiered police officers and rehabilitated Sikh terrorists. The group had reach throughout the Punjab and is alleged to have had carte blanche in carrying out possibly thousands of staged "encounter killings." (NOTE: Former Director General Punjab Police KPS Gill publicly praised the group, saying the Punjab police could not function without them. End Note.) Herkewaljit Singh told us that Alam was "at the top of the list" in authorizing encounters during the insurgency period. He also told us, however, that Alam's superior, Director General of Punjab Police Virk, is very strict and that

custodial killings have decreased under his leadership; Avinash Chopra said that custodial killings have "declined dramatically" since 1994 due to post-insurgency changes in policing in Punjab. When Alam visited the UK in 2003 for a conference on Indian policing, three individuals accused him of having either watched them be tortured or directing other police officers to inflict torture, to include their arms being suspended from the ceiling, their legs being crushed under heavy weights, and the application of electric shocks and acid. Some human rights cases against Alam remain pending in India.

End Responses.
BLAKE